

BRISBANE REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

July 2014



JOHN CHIANG
California State Controller

July 7, 2014

Clay Holstine, City Manager
Brisbane Redevelopment/Successor Agency
50 Park Place
Brisbane, CA 94005

Dear Mr. Holstine:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Brisbane Redevelopment Agency (RDA) to the City of Brisbane (City) or any other public agency after January 1, 2011. This statutory provision states, "The Legislature hereby finds that a transfer of assets by a redevelopment agency during the period covered in this section is deemed not to be in furtherance of the Community Redevelopment Law and is thereby unauthorized." Therefore, our review included an assessment of whether each asset transfer was allowable and whether the asset should be turned over to the Successor Agency.

Our review applied to all assets including, but not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and rights to payment of any kind. We also reviewed and determined whether any unallowable transfers of assets to the City or any other public agencies have been reversed.

Our review found that the RDA transferred \$19,812,180 in assets after January 1, 2011, including unallowable transfers totaling \$137,099 to the City of Brisbane, or less than 1% of transferred assets, that must be turned over to the Successor Agency.

If you have any questions, please contact Elizabeth González, Bureau Chief, Local Government Compliance Bureau, by telephone at (916) 324-0622.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/kw

cc: Stuart Schillinger, Administrative Services Director
City of Brisbane
Betsy Cooper, Deputy Finance Director
City of Brisbane
Bob Adler, Controller
San Mateo County
Paul Scannell, Chairman
Brisbane Redevelopment Successor Agency Oversight Board
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Elizabeth González, Bureau Chief
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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Brisbane Redevelopment Agency (RDA) after January 1, 2011. Our review included, but was not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and rights to payments of any kind from any source.

Our review found that the RDA transferred \$19,812,180 in assets after January 1, 2011, including unallowable transfers of assets totaling \$137,099 to the City of Brisbane (City), or less than 1% of transferred assets, that must be turned over to the Brisbane Redevelopment Successor Agency.

Background

In January of 2011, the Governor of the State of California proposed statewide elimination of redevelopment agencies (RDAs) beginning with the fiscal year (FY) 2011-12 State budget. The Governor's proposal was incorporated into Assembly Bill 26 (ABX1 26, Chapter 5, Statutes of 2011, First Extraordinary Session), which was passed by the Legislature, and signed into law by the Governor on June 28, 2011.

ABX1 26 prohibited RDAs from engaging in new business, established mechanisms and timelines for dissolution of the RDAs, and created RDA Successor Agencies to oversee dissolution of the RDAs and redistribution of RDA assets.

A California Supreme Court decision on December 28, 2011 (*California Redevelopment Association et al. v. Matosantos*), upheld ABX1 26 and the Legislature's constitutional authority to dissolve the RDAs.

ABX1 26 was codified in the Health and Safety (H&S) Code beginning with section 34161.

In accordance with the requirements of H&S Code section 34167.5, the State Controller is required to review the activities of RDAs, "to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency or any other public agency, and the redevelopment agency," and the date on which the RDA ceases to operate, or January 31, 2012, whichever is earlier.

The SCO has identified asset transfers that occurred after January 1, 2011, between the RDA, the City, and/or other public agencies. By law, the SCO is required to order that such assets, except those that already had been committed to a third party prior to June 28, 2011, the effective date of ABX1 26, be turned over to the Successor Agency. In addition, the SCO may file a legal action to ensure compliance with this order.

Objective, Scope, and Methodology

Our review objective was to determine whether asset transfers that occurred after January 1, 2011, and the date upon which the RDA ceased to operate, or January 31, 2012, whichever was earlier, between the city or county, or city and county that created an RDA, or any other public agency, and the RDA, were appropriate.

We performed the following procedures:

- Interviewed Successor Agency personnel to gain an understanding of the Successor Agency operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the City Council, the RDA, the Successor Agency, and the Oversight Board.
- Reviewed accounting records relating to the recording of assets.
- Verified the accuracy of the Asset Transfer Assessment Form. This form was sent to all former RDAs to provide a list of all assets transferred between January 1, 2011, and January 31, 2012.
- Reviewed applicable financial reports to verify assets (capital, cash, property, etc.).

Conclusion

Our review found that the Brisbane Redevelopment Agency transferred \$19,812,180 in assets after January 1, 2011, including unallowable transfers of assets totaling \$137,099 to the City of Brisbane, or less than 1% of transferred assets, that must be turned over to the Brisbane Redevelopment Successor Agency.

Details of our findings are described in the Findings and Orders of the Controller section of this report. We also have included a schedule of assets.

Views of Responsible Officials

We issued a draft review report on February 18, 2014. Clay Holstine, City Manager, responded by letter dated February 24, 2014. The City's response is included in this final review report as an attachment. Please note that the City's response references findings related to housing assets. These findings were eliminated due to a subsequent court ruling.

Restricted Use

This report is solely for the information and use of the City, the Successor Agency, the Oversight Board, the Brisbane Housing Authority, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record when issued final.

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

July 7, 2014

Finding and Order of the Controller

**FINDING—
Unallowable asset
transfers to the
City of Brisbane**

The Brisbane Redevelopment Agency made unallowable transfers to the City of Brisbane in the amount of \$137,099 on October 4, 2011. The transfers were made to pay interest expense on cash advances that the City made to the RDA (see Schedule 1).

Pursuant to H&S Code section 34167.5, any asset transfers by the RDA to a city, county, city and county or any other public agency after January 1, 2011, that were not contractually committed to a third party must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d) and (e).

Order of the Controller:

Pursuant to H&S Code section 34167.5, the City of Brisbane is ordered to reverse the transfers of the above assets in the amount of \$137,099, and turn the assets over to the Successor Agency.

City's Response:

As for the \$137,099 transferred to the City of Brisbane, that was the annual interest payments on loans from the City for fiscal year 2010-2011. These payments were a de facto receivable on July 1, 2010. The payments were made on October 4, 2011 reversing the receivables. The receivables were prior to the dissolution date and, therefore according to our understanding does not need to be transferred back to the Successor Agency.

SCO's Comment:

The RDA transferred funds to the City after January 1, 2011; therefore, the asset transfers are unallowable under H&S Code section 34167.5. The Order of the Controller remains the same.

**Schedule 1—
Unallowable RDA Asset Transfers to the City of Brisbane
January 1, 2011, through January 31, 2012**

Date	From RDA Fund #	Reference	Description	To City Fund #	Amount
10/4/2011	281	Journal #00-15	Annual interest of 4% of \$2,295,995.92 Advance from Marina Fund	555	\$ 91,840
10/4/2011	282	Journal #00-15	Annual interest of 3.5% of \$1,293,108 Advance from General Fund	100	45,259
Total unallowable transfers subject to H&S Code section 34167.5					<u>\$ 137,099</u> ¹

¹ See the Findings and Orders of the Controller section.

**Attachment—
City's Response to
Draft Review Report**



CITY OF BRISBANE

50 Park Place
Brisbane, California 94005-1310
(415) 508-2100
Fax: (415) 467-4989

February 24, 2014

Dear Mr. Chiang,

Thank you for the opportunity to respond to the issues from the September 2013 State Controller's Audit of asset transfers.

The transfer of assets to the Housing Authority was done in stages and approved by our Oversight Board but not by resolution. After receiving an advance copy of the draft and discussing this with your auditor, we brought the items back to the Oversight Board for approval by resolution OB 2014-04. The resolution was approved on February 13, 2014 to transfer Low and Moderate Income Housing assets, less the cash, to the Brisbane Housing Authority. The resolution is attached.

The Assets transferred from Fund #283, Low/Mod Housing Fund were Loans receivable for Low Income Housing and First Time Home Buyers assistance. The property held for resale was reclassified to a Land asset for future development by the Housing Authority under the conditions of the Health and Safety codes. The cash balance was returned to the county auditor for distribution to the underlying entities upon completion of the Due Diligence Report dated September 28, 2012 and approval of the Oversight Board on October 10, 2012.

As for the \$137,099 transferred to the City of Brisbane, that was the annual interest payments on loans from the City for fiscal year 2010-2011. These payments were a de facto receivable on July 1, 2010. The payments were made on October 4, 2011 reversing the receivables. The receivables were prior to the dissolution date and therefore according to our understanding does not need to be transferred back to the Successor Agency.

We have strived to follow the rules of the dissolution of the Redevelopment Agency and hope for a quick resolution of these issues.

Sincerely,

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>